IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 3007 of 2006(G)

PETITIONERS:
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1. **KERALA FINANCIAL CORPORATION OFFICERS ASSOCIATION, KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM-33, REPRESENTED BY ITS SECRETARY, J.FRANCIS, DEPUTY MANAGER, KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM.**

2. **KERALA FINANCIAL CORPORATION EMPLOYEES ASSOCIATION, KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM-33, REPRESENTED BY ITS SECRETARY, M.RADHAKRISHNAN NAIR, JUNIOR EXECUTIVE, KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
SMT.JAYASREE MANOJ
SRI.M.RISHIKESH SHENOY
SRI.P.GOPAL

RESPONDENTS:
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1. **KERALA FINANCIAL CORPORATION, VELLAYAMBALAM, THIRUVANANTHAPURAM-33, REPRESENTED BY ITS MANAGING DIRECTOR.**

2. **STATE OF KERALA, REPRRESENTED BY THE PRINCIPAL SECRETARY (FINANCE), SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.U.K.RAMAKRISHNAN, SC, KFC for R1
BY GOVERNMENT PLEADER SRI. M.P.PRAKASH for R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON 13/04/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF CHARTER OF DEMAND DTD. 30/06/2001 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT.**
EXT.P2:	**COPY OF THE LETTER DTD. 22/01/2004 OF THE 1ST PETITIONER TO THE 1ST RESPONDENT.**
EXT.P3:	**COPY OF LETTER DTD.11/10/2004 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**
EXT.P4:	**COPY OF THE MINUTES OF THE DISCUSSION BY THE SUB COMMITTEE WITH THE REPRESENTATIVES OF THE SERVICE ORGANISATIONS HELD ON 04/11/2004.**
EXT.P5:	**COPY OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE KFC HELD ON 09/11/2004.**
EXT.P6:	**COPY OF THE LETTER DTD. 22/11/2004 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**
EXT.P7:	**COPY OF THE MINUTES OF THE DISCUSSION BY THE SUB COMMITTEE WITH THE REPRESENTATIVES OF THE SERVICE ORGANISATIONS HELD ON 02/12/2004.**
EXT.P8:	**COPY OF THE LETTER DTD. 06/12/2004 OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT.**
EXT.P9:	**COPY OF THE LETTER DTD. 06/01/2005 OF THE 2ND RESPONDENT TO THE 1ST RESPONDENT.**
EXT.P10:	**COPY OF THE LETTER DTD. 18/03/2005 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**
EXT.P11:	**COPY OF THE LETTER DTD. 16/04/2005 OF THE PETITIONER TO THE 1ST RESPONDENT.**
EXT.P12:	**COPY OF THE LETTER DTD. 02/06/2005 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**
EXT.P13:	**COPY OF THE G.O. DTD. 12/01/2006.**
EXT.P14:	**COPY OF PROFIT AND LOSS ACCO;UNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/1999.**

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WPC.NO.3007/2006 G

EXT.P14(A): COPY OF PROFIT AND LOSS ACCOUNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/2000.

EXT.P14(B): COPY OF PROFIT AND LOSS ACCOUNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/2001.

EXT.P14(C): COPY OF PROFIT AND LOSS ACCOUNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/2002.

EXT.P14(D): COPY OF PROFIT AND LOSS ACCOUNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/2003.

EXT.P14(E): COPY OF PROFIT AND LOSS ACCOUNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/2004.

EXT.P14(F): COPY OF PROFIT AND LOSS ACCOUNT OF THE 1ST RESPONDENT FOR THE YEAR ENDED 31/03/2005.

EXT.P15: COPY OF STATEMENT SHOWING THE OPERATING PROFIT OF THE 1ST RESPONDENT FOR THE YEARS 98-99 TO 04-05.

EXT.P16: COPY OF THE STATEMENT SHOWING THE EXPENSES INCURRED FOR THE EMPLOYEES BY THE 1ST RESPONDENT FOR THE YEARS 98-99 TO 04-05.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE RELEVANT PORTION OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31/03/2002 PERTAINING TO KERALA FINANCIAL CORPORATION.

EXT.R2(B): COPY OF THE CIRCULAR NO.9894/BPE 2/03/PLG.DTD. 2/03/2005.

EXT.R2(C): COPY OF THE CIRCULAR DTD. 29/03/2004.

EXT.R2(D): COPY OF THE G.O.(MS) 1972/99/FIN. DTD. 04/10/1999 IMPLEMENTING THE PREVIOUS PAY REVISION WITH EFFECT FROM 01/07/1996.

EXT.R2(E): COPY OF THE GOVERNMENT ORDER DTD. 14/10/1999.

EXT.R2(F): COPY OF THE GOVERNMENT ORDER DTD. 24/10/1994.

EXT.R2(G): COPY OF THE GOVERNMENT ORDER DTD. 15/07/1995.

EXT.R2(H): COPY OF THE LETTER DTD. 06/12/2004.

EXT.R2(I): COPY OF THE LETTER DTD. 01/01/2005.

/TRUE COPY/

KSS

K.K.DENESAN, J.

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W.P.(C).No.3007 OF 2006-G.

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Dated this the 13th day of April, 2007.

J U D G M E N T

The Kerala Financial Corporation (hereinafter referred to as the 'KFC') is a statutory corporation constituted as per the provisions of the State Financial Corporations Act, 1951, (for short, 'the Act'). The KFC is a State as defined in Article 12 of the Constitution of India.

2. The first respondent is an Association of the Officers of the KFC and the second petitioner is an Association of the employees of the KFC. The petitioners are registered Unions under the Trade Unions Act, 1926 and are recognised by the KFC. It is contended that the petitioners represent a major section of the officers and the employees of the KFC.

3. Salary and other monetary benefits payable to the officers and the employees of the KFC have been

subjected to revision every five years by issuing separate orders in that behalf. The revision of pay is effected through the settlement arrived at between the Management and Service Organisations of the KFC through bilateral agreements. Recognised service organisations and the management of the KFC are the parties to the settlement.

4. The period for which agreement was entered into as stated above introducing the last pay revision in the KFC expired on 30-6-2001. The revision was for the period from 1-7-1996 to 30-6-2001. On the expiry of the above period, the first petitioner submitted Ext.P1 charter of demands on 30-6-2001. The first respondent - KFC did not take any action on Ext.P1. Taking into consideration the delay caused in holding negotiations for arriving at a settlement, the first petitioner requested the KFC as per Ext.P2 to grant interim relief @ 40% of the basic pay plus DA to the employees and the officers, pending finalisation of the pay revision. The first respondent sent Ext.P3 letter dated 11-10-2004 to the second respondent-Government of

Kerala requesting for permission to start negotiations and to sign fresh long term agreement with the service organisations on revision of pay and allowances. Simultaneously as per decision taken in the Board meeting of the first respondent held on 29-9-2004, a subcommittee was constituted for the special purpose of holding negotiations with the service organisations and for submitting its recommendations regarding the proposed new pay revision settlement. The subcommittee so constituted held three meetings. The first discussion with the service organisations took place on 4-11-2004. As a result of the above discussion a consensus was arrived at with regard to the rate of interim relief to be granted to the employees. The rate of interim relief thus arrived at is 20% of basic pay with effect from 1-7-2001. The subcommittee placed the above recommendation for the consideration of the first respondent KFC. Ext.P4 is the copy of the minutes of the discussion held on 4-11-2004 by the subcommittee with the representatives of the service organisations.

5. In the Board meeting of the subcommittee held on 9-11-2004 it was decided to sanction interim relief to the employees and officers of the KFC subject to approval by the Government at the rates shown below:-

From 1-7-2001 to 30-6-2003	-	@ 10% of the basic pay.
From 1-7-2003 onwards till finalisation of the settlement	-	@ 20% of the basic pay.

Ext.P5 is the minutes of the Board meeting held on 9-11-2004.

6. In accordance with the above decision of the KFC, Ext.P6 letter dated 22-11-2004 was sent to the second respondent requesting to accord sanction for payment of interim relief @ 10% of the basic pay with effect from 1-7-2001 to 30-6-2003 and @ 20% of the basic pay from 1-7-2003 onwards to the employees of the KFC till the finalisation of the new wage settlement.

7. The subcommittee again held meeting with the representatives of the service organisations on 2-12-2004. Consensus was reached between the management and the service organisations with regard to the various allowances payable to the employees. This fact is

evident from Ext.P7 minutes of the discussion by the subcommittee held on 2-12-2004.

8. In response to Ext.P3 letter of the KFC requesting for permission to start negotiations with the service organisations regarding pay revision, Government as per Ext.P8 letter dated 6-12-2004 stated that in view of various Government orders issued earlier, wage revision cannot be allowed in loss making Public Sector Undertakings and since KFC has been incurring loss for the last few years, Government cannot accede to the demand of the KFC for wage revision. Ext.P8 letter, however, did not mention anything regarding the permission for granting interim relief, pending finalisation of the new wage revision settlement. Subsequently, the Government as per Ext.P9 letter dated 6-1-2005 informed the KFC that Public Sector Undertakings which are not entitled to claim wage revision are not entitled to claim interim relief also.

9. The first respondent could not agree with the view expressed by the second respondent Government that

the Corporation has been running at a loss. Hence Ext.P10 letter dated 18-3-2005 was sent by the Chairman of KFC to the Principal Secretary, (Finance), Government of Kerala. After narrating the facts and circumstances which led to the holding of discussions with the service organisations and the taking of decisions seeking the permission of the Government for early settlement of wage revision and interim relief, Ext.P10 concludes as follows:-

> "In this connection we would like to submit the following facts for kind consideration Operating results of the Corporation for the last three years are furnished below:-
>
> (Rs. in lakhs)

YEAR	Sanction	Disbursement	Operating profit
2001-2002	16382	17594	105
2002-03	15573	11231	115
2003-04	16958	11902	953

> It may be seen from the above that the performance of the Corporation has been fairly good resulting in profits. The loss as reported to have been made is only due to provision for NPA which is not a cash loss. The Corporation's financial position is sound enough to meet the additional commitment of Rs.220.11 lakhs (upto February, 2005) on

> account of payment of interim relief sanctioned by the Board. In this connection it may also be noted that KFC is one among the top 3 SFCs in India as per evaluation study conducted by SIDBI.
>
> In these circumstances, it is requested that Government may kindly accord sanction for payment of interim relief as decided by the Board and also give permission for negotiations with the Employees Organisations for revision of pay and allowances."

10. Pending consideration of Ext.P10 by the Government, the first petitioner submitted Ext.P11 representation dated 16-4-2005 before the Board of Directors of KFC contending that the power of the Government to interfere with the affairs of KFC operates only in a limited sphere and matters relating to wage revision as also interim relief to the employees are outside the jurisdiction of the Government. The first petitioner, therefore, requested the KFC to hold bilateral discussions to revise the pay and to grant the interim relief, without waiting for permission from the Government. It appears that the first respondent sent Ext.P12 letter dated 2-6-2005 to the 2nd respondent requesting to review the stand taken

by the Government and to accord sanction for the payment of interim relief and to start negotiations for revision of pay and allowances. In reply to Ext.P12, Government sent Ext.P13 letter dated 12-1-2006 to the first respondent. Paragraph 2 of Ext.P13 reads:-

> "2. Government, after examining the matter in detail are pleased to issue the following orders.
>
> i) Kerala Financial Corporation is permitted to start negotiation with service organisations in the matter of revision of pay and allowances of the employees of Kerala Financial Corporation. They shall enter into bilateral agreement only with the prior approval of the Government.
>
> ii) The percentage of increase in the pay and allowances, date of effect on revision etc. shall be referred to the Public Enterprises Board based on whose guidance, the negotiations shall commence.
>
> iii) The Kerala Financial Corporation is permitted to sanction Interim Relief @ Rs.300/- p.m. to the employees w.e.f. 1.1.2006. This will be adjusted against pay revision arrears."

11. The petitioners feel aggrieved by the stand taken by the respondents to the extend the Government insists its permission for starting negotiations and for finalising the wage revision settlement and the

grant of interim relief to the employees and the officers of the KFC. The petitioners have prayed for the issue of a writ of mandamus directing the first respondent to release the interim relief as decided by the KFC on 9-11-2004, and for a further direction to the first respondent to proceed with the negotiations and finalise the new pay revision settlement for the period 1-7-2001 to 30-6-2006 and implement the decisions arrived at without seeking the approval of the State Government. The petitioners have sought for a declaration that the State Government has no authority to interfere or to issue directions on matters relating to the service conditions including revision of pay and allowances of the employees and the officers of KFC.

12. In support of the declaration thus sought for, namely, that the Government has no authority to interfere or to issue directions on matters relating to the service conditions including revision of pay and allowances of the employees and the officers of KFC, emphasis is sought to be placed on the fact that the

KFC is an autonomous body and the contention that the power of the State Government is limited to issuance of instructions touching the essential and primary functions of the KFC and not on any matter outside the aforesaid functions. It is contended that revision of pay is not a matter of policy and does not fall within the purview of essential and primary functions of the KFC.

13. The first respondent-KFC has filed a counter-affidavit. The sequence of events stated by the petitioners in the writ petition have been more or less admitted by the first respondent in the counter-affidavit. It is, however, stated, among other, that as per the practice followed by the KFC, it was necessary to approach the Government of Kerala to sanction and release the interim relief. According to the first respondent, its financial performance for the financial years 2001-02 and 2002-03 were on operating profit (but were on net loss) and was on net profit for the year 2003-04. It is contended that as per Section 39(1) of the State Financial Corporations Act 1951,

the KFC Board shall be guided, in the discharge of its functions, by such instructions on question of policy as may be given to it by the State Government in consultation with and after obtaining the advice of the Small Industries Development Bank of India. Towards the end of the counter-affidavit the Managing Director of the first respondent has stated that the performance of the KFC was on operating profit from 1999 to 2005, but were on net loss during 1999-2000, 2000-01, 2001-02, 2002-03 and 2004-05. It is also averred that during the years 1998-99 and 2003-04, the KFC earned a net profit of Rs.243 lakhs and Rs.181 lakhs respectively. The counter-affidavit says that the State Government is not providing any grant to the first respondent Corporation. But the share capital holding of the Government is 90.41% as on 31-3-2005. As per the audited accounts for the financial year ended on 31-3-2005 the percentage of employee expenses compared to total income, is 10.05%.

14. In the counter-affidavit filed on behalf of the second respondent-Government averments have been

made with supporting materials to contend for the position that the Government have got a say in the matter and the first respondent shall not act in defiance of the instructions given by the Government. Reliance is sought to be placed on the role played by the Government under Section 39(1) of the State Financial Corporation Act, as also the authority it can exercise being the major share holder. According to the second respondent, the financial capacity of the first respondent is not sound as to enter into a new settlement with its employees and officers for revision of pay and allowances. The petitioners have filed a reply-affidavit to controvert facts and contentions pleaded by the respondents to the extend they are directed against the grounds urged by the petitioners.

15. I have heard at length Shri.P.G.Parameswara Panicker, learned counsel for the petitioners, Shri.U.K.Ramakrishnan, learned counsel for the first respondent and Shri.M.P.Prakash, learned Special Government Pleader for the second respondent.

16. The KFC is a statutory autonomous body

constituted under Section 3 of the Act which came into force in 1951. It was enacted to provide for the establishment of State Financial Corporations to create institutional frame work for financing media and small scale industries. It is managed as provided in Section 9 of the Act by a Board consisting of the majority of Directors nominated by the State Government, the Reserve Bank and the Small Industries Bank vide Section 10 of the Act. The State Financial Corporations constituted under the Act stand as regional representative institutions to work out the diversification in the financial system, required to cater industrial enterprises. After its coming into force in 1951, it has undergone amendments in 1956, 1962, 1972, 1975, 1985 and 2000. The Act was comprehensively amended in 2000 to enable the State Financial Corporations to equip themselves to the emerging business environment on the introduction of economic reforms and to strengthen their share holder base and to provide them with greater financial autonomy and operational flexibility (emphasis

supplied). The main features of the amendment include autonomy to the State Financial Corporations with regard to the investment of funds, vesting more power in the general body of share holders and empowering the State Government to issue guidelines on questions of policy to the State Financial Corporations provided the Government holds not less than 51% of the issued equity share capital. In other cases, the role of the State Government is only to advice the State Financial Corporations on matters of policy. In the year 1990, the Small Industrial Development Bank of India (SIDBI) was established under the Small Industries Development Bank of India Act, 1989.

17. Section 23 of the Act confers power on the first respondent to appoint such officers, advisers and other employees as it considers necessary for the efficient performance of its functions and determine, by regulations, their conditions of appointment and service and remuneration payable to them. The conditions of appointment and the remuneration payable to the officers, the advisers and the employees shall

be determined by the first respondent by regulations made under Section 48 of the Act. Sub Section (1) of Section 48 of the Act reads:-

> "*48. Power of Board to make regulations:-* (1) The Board may, after consultation with the Small Industries Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act."

18. In exercise of the power to make regulations, the first respondent has framed the Kerala Financial Corporations Staff Regulation, 1966 (hereinafter referred to as 'the Regulations'). with the previous sanction of the second respondent-Government. The Regulations apply to all whole time employees of the first respondent. Under regulation 8(i) of the Regulations the permanent staff of the first respondent shall have to be grouped as Class A - Senior Officers, Class B - Middle level officers, Class C - Assistants, Clerical staff, Stenographers and Typists and Class D - Subordinate staff. Regulation 8(ii) of the Regulations reads:-

> "The Board shall fix from time to time the number of posts in all categories and the pay scales of the officers and other employees. The present pay scales are shown in the Appendix."

The Appendix consists of the nomenclature of the various posts starting from the post of Sweeper to that of General Manager, printed on the left side and the scales of pay of the respective posts printed on the right side. The learned counsel for the petitioners made a forceful endeavor to project the case of the petitioners that revision of pay scales is a matter between the management and the members of the staff of the first respondent Corporation and that the second respondent Government has no say in such matters.

19. Learned Government Pleader as also the learned counsel for the first respondent submitted that the scheme of the Act would unmistakeably show that the State Government has got an all pervasive control over the management and the administration of KFC. Section 4 deals with the share capital and share holders. Section 4(1) says that the authorised capital of the Financial Corporation shall be such sum as may be fixed

by the State Government in that behalf etc. Section 4 (3) says that subject to the approval of the State Government and the Small Industries Bank, the Board shall determine the number of shares which may, respectively be distributed among (a) the State Government; (b) the Small Industries Bank; (c) Public Sector Banks, the LIC of India, etc; and (d) parties other than those referred to in Clauses (a), (b) or © provided that the number of shares which can be allotted to the parties referred to in Clause (d) shall in no case exceed 49% of the total number of issued equity shares. The power to specify the issue of special class of shares, in consultation with the Small Industries Bank, is also vested in the State Government vide Section 4A of the Act. Under Sec.7 of the Act, it is open to the State Government to guarantee the bonds and debentures issued by the Financial Corporation as to the repayment of principal and the payment of interest at such rate as may be fixed by the State Government. Sec.8 of the Act provides that the Financial Corporation may accept from the State

Government deposits repayable on such terms as the Board thinks fit. The State Government has got the right to nominate two Directors in the Board of Directors constituted under Sec.10 of the Act. The power to appoint and remove the Managing Director is that of the State Government (see Sec.17 of the Act). Under Sec.25 of the Act, but subject to other provisions of the Act, the KFC is free to act as the agent of the Central Government, State Government, etc. The State Government has got the power to instruct KFC on questions of policy. KFC, though authorised to make regulations, cannot do so without the previous sanction of the State Government. It is so provided in Sec.48 of the Act. Based on the above provisions of law, learned Special Government Pleader submitted that the first respondent cannot take decisions involving financial implications without the junction of the Government. It is submitted that the Government have vital interest in the entire affairs of the first respondent.

20. Though the interest of the Government in the

affairs of the KFC cannot be denied, I am of the opinion that the power of the Government to issue binding instructions in matters relating to pay, allowances etc. of the employees, Sections 23, 39 and 48 of the Act have got a direct bearing on the issue and that, much will depend on the application of those provisions to the fact situation herein. Of course, the powers of respondents 1 and 2 to do certain things are traceable to the above provisions; but the limitations placed on the said respondents in exercising such powers, on a true construction of the provisions, are also equally important.

21. The second respondent seeks to substantiate its stand that it has got a say in the matter of revision of pay scales, mainly on the basis of three contentions.

22. The first among those contentions is founded on Section 39 of the Act. It is common case that Section 39 is an important section in the context of the issue for consideration. The said Section reads:

> *"39. Power to give instructions to Financial Corporation on questions of policy:-* **(1) In**

the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government in consultation with and after obtaining the advice of the Small Industries Bank.

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

(2A) Nothing contained in sub-section (1) and sub-section (2) shall apply in a case where a State Government holds less than fifty-one per cent of the equity shares in the Financial Corporation.

(2B) Notwithstanding the equity share holding of a Financial Corporation by a State Government, the State Government may advise the Financial Corporations on the matters of policy.

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of section 37-A, the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any court."

It may be noted in this context that sub-sections 2A and 2B were inserted by the State Financial Corporation

(Amendment) Act, 2000 with effect from 5-9-2000. According to the second respondent, the intention of the legislature is clear from a plain reading of sub-sections (1) and (2) of Section 39 of the above Act. It is mandatory that the Board shall be guided in the discharge of its functions by such instructions on questions of policy as may be given to it by the State Government. According to the second respondent, whether or not, the present pay of the employees and the officers of the first respondent shall be revised, and if so, when and how, are questions of policy, and therefore, the first respondent shall discharge its functions in that regard in due compliance of the instructions given by the second respondent. The second respondent asserts that as per the provisions of sub-section (2) of Section 39, the Government decision is final on the above aspect. Hence, the direction issued by the Government, to desist from revising the pay of the employees and the officers of the first respondent in the background of the fact that the first respondent has not proved to be an establishment

running on profit for two consecutive years, is binding on the first respondent.

23. Secondly, it was contended that the revision of pay scales, cannot be brought into force without amending the Appendix under regulation 8(ii) of the Regulations and any such amendment shall have the previous sanction of the State Government, as provided in Section 48(i) of the Act.

24. Thirdly, it was contended that the first respondent being a Public Sector Enterprise, its employees cannot claim any legal right to ask for directions to the respondents to meet the additional expenditure that may have to be incurred by revising the wages. The policy decision taken by the Union Government vis-a-vis Public Sector Enterprises shall apply mutatis mutandis to matters between the first respondent and the second respondent. Therefore, KFC will have to generate its own resources to meet the expenditure required to increase the wages and that till decision to revive financially weak enterprises is taken, no revision in pay scale can be allowed. The

stand of the Union of India has been upheld by the Supreme Court in *A.K.Bindal v. Union of India* (AIR 2003 SC 2189) and that the petitioners cannot press into service their demand for revision of pay except in accordance with the policy of the Government in relation to Public Sector Undertakings, which has its approval by the Apex Court also.

25. The learned counsel for the first respondent submitted that according to the statistics and the balance sheet available with KFC, the real fact is that it is not running at loss and that the revision of pay scales which is over due, if delayed any further, will add to the discontentment and frustration among the employees and the officers of KFC. The first respondent cannot turn a nelson's eye towards such frustration and demoralisation. According to the assessment made by the first respondent, it has got the capacity to grant reasonable increase in the pay scales without sacrificing the interest and progress of the business of the first respondent. The first respondent, however, asserts that it will abide by the

instructions issued by the 2nd respondent in the matter of revision of the pay scales of the employees and officers also, as enjoined in Section 39(1) and (2) of the Act.

26. In my view, the scheme of the Act, would make it clear that the primary and essential functions of the first respondent is to provide loans to the industrial undertakings and to guarantee loans raised by the industrial concerns. Appointing the required number of staff and paying them salary and allowances at such rates as may be decided from time to time is incidental. The word 'functions' occurring in Sec.39 (1) means, only such functions which are essential or primary in nature. The power of the Government to issue instructions extends only to such policy matters which pertain to essential and primary functions of the first respondent. The Government is not authorised to interfere with each and every activity carried on by the 1st respondent. The State does not have the sanction of law to interfere with the routine and day today functions of the Corporation. As per the

amendment of the Act in 2000, if the share held by the Government is below 50%, it cannot issue any binding instruction to the first respondent even in the matter of its essential and primary functions which involve policy decisions. Such of the State Governments which hold only less than 50% share, can only advise the Corporations and nothing more. Therefore, the contention of the State that it has got a heavy financial stake in the management of the Corporation will not clothe it with the power to issue binding instructions to the first respondent even in matters relating to the revision of pay or other service benefits to mitigate the hardship and other difficulties experienced by the employees, on account of rise in prices, inflation, etc. Periodical increase in the wages is the ideal principle and denial of that is the exception. No such exceptional circumstances exist in the first respondent. It has got the capacity to give reasonable increase in the pay scales which were fixed a decade ago. Going by the practice followed by KFC, revision of pay scales had fallen due

in June, 2001.

27. As rightly contended by the learned counsel for the petitioners, for ascertaining the scope and meaning of the expression 'in the discharge of its functions' and 'questions of policy' occurring in Sec.39(1) of the Act, the meaning ascribed to similar expressions in Sec.78A of the Electricity (Supply) Act, 1948 by a Full Bench of this Court in A.M.Mani v. State Electricity Board (FB) (AIR 1968 Kerala 76) will be helpful. Section 78A, aforesaid, is extracted below for easy reading:-

> "*78A. Directions by the State Government:*
>
> (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.
>
> (2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final."

Except for the words, 'in consultation with and after obtaining the advise of the small industries Bank', the language of Sec.39(i) is almost identical with the language of sub-section (1) of Sec.78A of the

Electricity (Supply) Act, 1948. The Full Bench considered the scope and ambit of sub-section (i) of Sec.78A of the Electricity (Supply) Act, 1948 in a case where one of the Chief Engineers of the Kerala State Electricity Board challenged the direction issued by the State Government to superannuate on completion of 55 years of age, the members of the technical staff who could have continued in service till the age of 58 years. The Electricity Board acting upon the direction issued by the Government cancelled its earlier proceedings raising the retirement age from 55 to 58 years. The question arose whether the direction issued by the Government to the K.S.E. Board to reduce the retirement age from 58 to 55 years came within the purview of Sec.78A of the Electricity (Supply) Act, 1948. After considering the contentions urged by the parties, the Full Bench held as follows:-

> **"On the terms of the Section, the direction issued by the Government may appertain to the discharge of the Board's "functions". Chapter IV of the Act provides for the Powers and Duties of the Board. After defining what we may call its primary and essential functions it winds up with section 27 stating that the**

Board shall have "such further powers and duties as are provided in this Act". The primary functions of the Board are concerned with the generation distribution and utilisation of electricity, the development of water power etc. Notwithstanding this indication in Section 27 that the enumeration of the functions of the Board in the preceding provisions is not exhaustive, and the further indication to that effect available from Section 79(k) of the Act that the framing of rules and regulations under section 79 of the Act is one of the functions of the Board, we are of the opinion that the amplitude of the power to issue directions under Section 78A must be a limited one.

The section itself contains a limitation that the directions must be on question of policy. We feel that it is also implicit in the nature and conception of the Board, and the purpose of its incorporation that its autonomy is not to be fettered, if not entirely destroyed, by all manner of directions issued by the Government. The word 'functions' in its widest sense includes all powers and duties as implied by the marginal note to S.27. But in its ordinary sense, especially when used with reference to an authority, it generally means the functions which the authority was constituted to perform, what we might call its primary and essential functions, not incidental functions necessary for carrying on its essential functions. The expression "functions" in section 78A of the Act can only have relation to the primary and essential functions of the Board. One of the meanings given to the term "function" in the Shorter Oxford

> Dictionary is "special kind of activity proper to anything". We feel this shade of meaning is quite appropriate to the expression in section 78A of the Act."

Accordingly, the direction issued by the Government was held to be beyond the Government's power under Sec.78A. In this context, reference can be made to the decision of the Rajasthan High Court in ***RFC Officers Association v. RFC*** [RLR 1989(1) 821 (Raj.)] and the decision of the Patna High Court in ***Association of Selected Candidates v. State of Bihar and others*** [1991(1) Bank CLR 96 (Patna)] where similar questions arose for consideration. The view expressed by the aforesaid two High Courts accord with the view taken by the Full Bench of this Court in A.M.Mani's case (Supre). The Karnataka High Court also has taken the same view. (See ***Dr.Y.B.Yalwar v. State of Karnataka and others*** (II(1997) BC 265). Decision of the Full Bench in A.M.Mani's case (AIR 1968 Ker. 76) as also the decision of the Rajasthan High Court (AIR 1969 AP 328) have been cited and referred to by the Apex Court in AIR 1992 SC 1348. The Full Bench decision has been

followed in the judgment in OP.No.29809 of 2003 by M.Ramachandran, J.

28. Having regard to the similarity in the language in the aforesaid two sections occurring in the Act and the Electricity (Supply) Act, 1948 respectively, I am of the view that entering into bilateral agreements and arriving at settlement on issues pertaining to revision of pay, allowances, etc., do not come within the purview of primary or essential functions of the first respondent. I, therefore, hold that the view expressed by the Government in Exts.P8 and P11 are beyond its powers under Rule 39 of the Act.

29. Government Pleader submitted that whether pay scales shall be revised or not is a policy matter, and therefore, prior sanction of the Government is mandatory. Though, I am of the view that revision of pay scales may come within the purview of 'policy decisions', that by itself will not make prior sanction of the Government mandatory. The obligation to be guided by instructions given by the State Government on questions of policy arises only in matters relating to

the discharge of the primary or essential functions of the KFC. Since revision of pay scales is neither the primary nor the essential function of the KFC, it is irrelevant to harp on the question whether the said decision falls within the purview of the expression 'questions of policy'.

30. The next question for consideration is whether there is merit in the contention of the second respondent that revision of pay scales require previous sanction of the State Government as enjoined in Sec.48 (1) of the Act, because, pay scales revised from time to time also will form part of the Regulations. The basis for this argument is that when the Regulations were first framed, regulation 8(ii) had made a reference to the Appendix in which the pay scales then sanctioned, were shown. Thereafter, changes in the pay scales whenever made, have been incorporated in the Appendix. It cannot be disputed that the power to fix the number of posts in all categories and the pay scales of the officers and other employees of KFC has been conceded to its Board as per the Regulations. It

is common case that Staff Regulations, 1956 were framed and published with the previous sanction of the State Government. The Regulations framed and approved by the Government in terms of Section 48 of the Act authorises the first respondent to decide questions on pay and allowances to the employees of the Corporation. Nowhere in the Regulations including regulation 8(ii), we find any provision that requires the sanction of the Government before the Board decides to fix the pay scales of officers and other employees. The Regulations do not cast a duty on the first respondent to seek the approval or prior sanction of the Government whenever decision is taken by the Board of Directors with regard to the pay scales. The mere fact that, the Appendix attached to the Regulations shows the pay scales determined from time to time, does not mean that changes in the pay scales of the employees and officers is tantamount to a change or modification of the Regulations. Revision of pay can be done in exercise of the power given by the Regulations. It is an act done under the Regulations. It is not a

'Regulation Making Process' or a 'Regulation Amending Process', if I may say so. I am unable to accept the contention that the nomenclature of the posts and the scales of pay shown in the Appendix are integral part of the Kerala Financial Corporation Staff Regulations, 1966. Revision of pay scales from time to time does not tantamount to amendment of the Regulations. Whenever change of pay scales are made by the Board in exercise of its power under Rule 8(ii) of the Act, it cannot be said that on every such occasion Rule 8(ii) is undergoing an amendment. If prior sanction of the Government was necessary in fixing or revising the pay scales of employees and other officers from time to time, such a condition ought to have been clearly and specifically incorporated in Regulation 8(ii) of the Regulations. There is no such condition or rider in Regulation 8(ii). The power conceded to the KFC in this respect is unconditional and free from strings. To put it in other words, the Board is competent to change the pay scales, keeping regulation 8 unaffected and unaltered. Hence the reliance sought to be placed

by the first respondent on Regulation 8(ii) and the Appendix is without any force.

31. The question for consideration in ***A.K.Bindal v. Union of India*** (2003(5)SCC 163) was the binding effect of two official memoranda issued by the Department of Public Enterprises, Ministry of Industry, Government of India. The first one was issued as OM.No.1(3)/86-DPE (WC) dated 12-4-1993 and the second one was issued by the same Ministry on 19-7-1995. Para.2 of OM dated 12-4-1993 is reproduced below:

> "Under the new wage policy, the managements are free to negotiate the wage structure keeping in view and consistent with the generation of resources/profits by the individual enterprises/units. The Government will not provide any budgetary support for the wage increase and the respective managements will have to find the requisite resources from within their own internal generation. For certain PSEs which are monopolies or near monopolies or having an administered price structure, it must be ensured that increase in wages after negotiations do not result in an automatic increase in administered prices of their goods and services."

Paras.11 and 13 of OM dated 19-7-1995 reads as follows:

> "Subject: Revision of scales of pay of the Executives holding posts below the Board

level and non-unionised supervisors w.e.f. 1-1-1992.

11. The pay revision of the Executives holding posts below the Board level and non-unionised Supervisors would be permitted subject to the conditions stipulated in DPE's OM.No.1(3)/86-DPE (WC) dated 12-4-1993 and 17-1-1994. These conditions prescribe that there shall be no increase in labour cost per physical unit of output. The Government shall not provide any budgetary support to PSEs for meeting the enhanced liability. PSEs which are monopolies or near monopolies or having an administered price structure, it must be ensured that increase in salaries/wages do not result in an automatic increase in administered prices of their goods and services. Requisite resources for the pay increases must be found from within their own internal generation.

13. For sick PSEs registered with BIFR, pay revision and grant of other benefits will be allowed only if it is decided to revive the unit. The revival package should include the enhanced liability on this account. The benefit of pay revision etc. shall be extended to IISCO and financial liability thereof shall be met by SAIL."

In para.13 of the judgment of the Supreme Court the question arose for consideration in Bindal's case has been briefly stated. Para.13 reads:

"13. The change in policy effected by these memorandums was that the Government would not provide any budgetary support for the wage increase and the undertakings themselves will have to generate the resources to meet the

> additional expenditure, which will be incurred on account of increase in wages. So far as sick enterprises which were registered with BIFR are concerned, it was directed that the revision in pay scale and other benefits would be allowed only if it was actually decided to revive the industrial unit. The question which arises for consideration is whether the employees of public sector enterprises have any legal right to claim that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision in pay scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard."

32. The ruling as also the observations in Bindal's case were made by the Apex Court in the above context. In this case the fact situation is different. More than that, the question here depends on the jurisdictional vistas of the second respondent under Sections 39 and 48 of the Act. Again, the autonomous character of State Financial Corporations and the working flexibility given to those Corporations by the Parliament are also important considerations. Hence, the ruling of the Apex Court touching the Public Sector Enterprises simpliciter cannot be as such made applicable to a statutory corporation like KFC.

33. Here, the first respondent is confident that it has got the capacity to revise the pay scales of its officers and employees. There is no reason to assume that the proposed revision of pay scales will be made without regard to the relevant considerations including the past, present and future financial and income generating capacity of the first respondent. Of course, the Government has got a stake in the management and affairs of the first respondent. It is so not only for the reason that 91.5% of the shares are held by the Government, but also for the reason that it is vitally interested in the well being and progress of the first respondent as also the proper functioning of the industries within the State which are eligible to get financial assistance from the first respondent. The Board of Directors as also the Managing Director of the first respondent will be responsible for the proper and efficient functioning of the first respondent. It is their responsibility to see that the first respondent does not sail into troubled waters and plunge itself into the financial doll drums. If such

dangers are likely to happen, the second respondent, in its capacity as the major share holder can exercise such rights and powers as are available to it under law, so that the decision of the Board of KFC will not be against the legitimate interest of that Corporation. It can bring about appropriate changes, in accordance with law, if need be, by nominating such members in the Board as also the office of the Managing Director, who will ensure managing the affairs of the KFC in the proper direction or prevent improper or inefficient functioning or mismanagement of the first respondent.

34. Be that as it may, I am of the view that the State Government has no authority to interfere with or issue directions in matters coming within the power of the Board of the first respondent enjoined under Regulation 8(ii) of the Regulations read with Section 48 of the Act. It is so declared.

35. There shall be a direction to the first respondent to proceed to negotiate with the recognised service organisations for finalising the pay revision settlements for the period commencing from 1-7-2001 to

30-6-2006 and to implement, according to law, the decisions arrived at, without seeking the approval of the State Government.

36. The first respondent is directed to release the interim relief to the employees and the officers of KFC as decided by the Board in its meeting held on 9-11-2004, as expeditiously as possible, in any event, within three months from the date of receipt of a copy of this judgment.

The Writ petition is allowed as above.

K.K.DENESAN, JUDGE.

kvs/-